IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 200 OF 2003.

Communidade of Mapusa,
Office at Communidade Building,
Mapusa, Goa. ..... Appellants.

Versus

1. Deputy Collector (LA) &
   Land Acquisition Officer,
   Panaji, Goa.
2. The Director of Transport,
   Directorate of Transport,
   Panaji, Goa. ..... Respondents.

Shri Valmiki Menezes, Advocate for the Appellants.

Shri S. R. Rivonkar, Government Advocate for the Respondents.

CORAM: B.H. MARLAPALLE &
N.A. BRITTO, JJ.

DATE: 1st NOVEMBER, 2004.

ORAL JUDGMENT: (PER BRITTO, J.)

This appeal is filed by the Communidade of Mapusa against the Judgment/Award dated 24.02.2003 of the learned Additional District Judge, Mapusa, dismissing the reference made by the said Communidade under Section 18 of the Land Acquisition Act, 1894.

2. Some facts are required to be stated to dispose of this appeal.

3. By virtue of Notification issued under Section 4(1) of the said Act and published on Gazette dated 26.12.1991 the Government acquired 2505 sq.m. of land of the said Communidade for the purpose of the Bus Stand at Mapusa and by Award dated 10.1.1995 the L.A.O. awarded to the applicant, compensation at the rate of Rs.60/- per sq.m.

4. Dissatisfied with the said Award, the applicant-Communidade got the said reference made to the District Court and in the said reference on behalf of the applicant, their Attorney, AW.1 Braganza was examined. The applicant also examined a Civil Engineer, and, placed reliance on a sale deed (Exh.23) in favour of M/s Kamat Constructions and in support thereof examined AW.3 Sanjeev Kamat.

5. We have perused the Award of the learned Addl. District Judge and have heard Shri Valmiki Menezes, the learned counsel of the Applicant-Communidade and learned Government Advocate Shri S.R. Rivonkar for the respondents. A perusal of the said Judgment/Award shows that the learned Addl. District Judge was much influenced by the fact that there was a claim of tenancy made by certain persons and on account of the same and in view of the provisions of the Goa Land Use (Regulation) Act, 1991 the applicant's land being agricultural in nature, would not be entitled for any enhancement. In our view the approach of the learned Addl. District Judge does not appear to be at all correct. As things stand today, the said claim of the tenants (vide Case No.TNC/SR/Issue/NOV/1 of 2000 before the Joint Mamlatdar, Mapusa) is yet to be decided and only in the event they succeed that the provisions of the Goa

Land Use (Regulation) Act, 1991 may be applicable. But as on today, it is rather premature to say whether their claim will come in the way of the applicant's land being assessed as land having building potential or not.

6. In view of the above, we find that the Judgment and Award of the learned Additional District Judge deserves to be set aside. We deem it appropriate that the learned Mamlatdar before whom the issue of tenancy is pending decides the same as expeditiously as possible, and in any event, within a period of six months from today and only thereafter upon the decision given by the learned Mamlatdar that the learned Addl. District Judge, Mapusa shall proceed with the reference. We leave both the parties to add to the evidence produced by them in case they so desire.

7. Appeal allowed on the above terms with no order as to costs. Copy of the Order be forwarded to the learned Mamlatdar.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

sl.